P. SUPPIAH

v.

THE LAW SOCIETY OF SINGAPORE

COURT OF APPEAL, SINGAPORE
LAI KEW CHAI J
LP THEAN J
FA CHUA J
[CIVIL APPEAL NO. 31 OF 1984]
8 NOVEMBER 1985

LEGAL PROFESSION: *Legal Profession Act - Section 86(1) - Two limbs - Professional capacity - Whether mutually exclusive - Application/complaint to Council - Inquiry Committee.*

The appellant had written to the Law Society of Singapore making certain allegations touching on the conduct of Mr. Cashin, an advocate and solicitor, principally alleging that Mr. Cashin had made untrue statements in certain affidavits and had committed a breach of Rule 6 of the Solicitors' Accounts Rules 1967 in that a cheque for the sum of $20,000 made out payable to him personally was credited to the clients' account of his firm, Murphy & Dunbar. The Law Society replied stating that it did not find a case of professional misconduct. The Law Society stated the matter would be referred to the Inquiry Committee only if it touched on the conduct of an advocate and solicitor in his professional capacity (s. 86(1) of the Legal Profession Act ("the Act")).

The appellant then took out an originating summons against the Law Society seeking (i) a declaration that his letter should be directed to the Inquiry Committee under s. 86(1) of the Act and (ii) that in the event the Council determined under s. 96(1)(a) of the Act, that a formal investigation was not necessary, the Law Society be ordered to apply for the appointment of a Disciplinary Committee under s. 96(4)(b) of the Act.

The application was heard and dismissed on the ground that there was no complaint against Mr. Cashin in relation to his conduct in his professional capacity. The appellant appealed.

Two questions arose in the appeal:

(a) The construction of s. 86(1) of the Legal Profession Act

(b) Whether the Council ought to have referred the appellant's letter to the Inquiry Committee.

Held:

[1] Section 86(1) has two limbs namely (i) an application that an advocate and solicitor be dealt with under Part VII of the Act and (ii) a complaint of the conduct of an advocate and solicitor in his professional capacity.

[2] For an application to come within the first limb it must be one in respect of a matter falling within one of the paragraphs (a) to (k) of s. 84(2) in respect of which an advocate and solicitor can be dealt with under Part VII of the Act and a complaint to fall within the second limb must be one touching upon the conduct of an advocate and solicitor in his professional capacity. The two limbs, however, are not mutually exclusive; they overlap each other.

[3] Where a person makes an application or complaint which falls within the meaning of s. 86(1) of the Act, it is mandatory on the part of the Council to refer it to the Inquiry Committee. On the other hand, where an application or a complaint does not fall within that subsection, the Council has no such obligation and, indeed, will be obliged to reject it. Thus the Council on receipt of an application or a complaint must consider whether it comes within s. 86(1); but it should not consider further whether the application or complaint discloses a *prima facie* case against the advocate or solicitor concerned.

[4] The first allegation referred to such conduct which may well have fallen within s. 84(2)(h) of the Act and the second allegation, did pertain to Mr. Cashin's conduct in his professional capacity and could also fall within s. 84(2)(j). Thus the Council should have referred the appellant's letter to the Inquiry Committee.

[Appeal allowed.]

Case referred to:
Hilborne v. Law Society of Singapore [1978] 1 MLJ 229

Legislation referred to:
Legal Profession Act [Sing], ss. 84(2), 86(1), (3), (4), 87(1)(c), (2), (5)(a)(i), 88(2), 96(1), (2), (1)(a), (4)(b), 97(1)
Solicitors' Accounts Rules 1967 [Sing], r. 6

For the appellant - A.S.K. Wee
For the respondent - Chelva Rajah

JUDGMENT

LP Thean J:

On 22 December 1983, the appellant, who is an advocate and solicitor, wrote to The Law Society of Singapore ("Law Society") making certain allegations touching on the conduct of another advocate and solicitor, Mr. Cashin, and enclosing copies of affidavits sworn by Mr. Cashin in an action in which he was sued as a defendant, copies of three cheques respectively and other documents referred to in the letter. The appellant alleged principally that Mr. Cashin:

(a) made untrue statements in his affidavits, and

(b) committed a breach of r. 6 of the Solicitors' Accounts Rules 1967 in that a cheque for the sum of $20,000 made out payable to him personally was credited to the clients' account of his firm, Murphy & Dunbar.

On 31 January 1984, the Executive Secretary of the Law Society replied to the appellant stating that his letter was considered by the Council of the Law Society ("the Council") and that the contents of his letter did not disclose "a *prima facie* case of professional misconduct" on the part of Mr. Cashin. The decision of the Council was not acceptable to the appellant who then through his solicitor, Mr. A.S.K. Wee, wrote to the Law Society requesting the Council to reconsider its decision. To Mr. Wee's letter the Executive Secretary on 28 February 1984 replied as follows:

> Your letter of the 9th instant was considered by the Council at its recent meeting and I am directed to inform you that Section 86(1) of the Legal Profession Act empowers the Council to refer the complaint to the Inquiry Committee **only if it touches on the conduct of an advocate and solicitor in his professional capacity.**

The Council further decided that it will not give its reasons for dismissing the complaint as it is not obliged to do so.

Not content with this response, the appellant took out an originating summons against the Law Society seeking: (i) a declaration that the Law Society be directed to refer his letter of 22 December 1983 ("the appellant's letter") to the Inquiry Committee under s. 86(1) of the Legal Profession Act ("the Act"), and (ii) further or in the alternative, in the event that the Council determined under s. 96(1)(a) of the Act that a formal investigation was not necessary, the Law Society be ordered to apply for the appointment of a Disciplinary Committee under s. 96(4)(b) of the Act. The application was heard by the learned Chief Justice who dismissed it on the ground that, on the facts alleged by the appellant, there was no complaint against Mr. Cashin in relation to his conduct in a professional capacity. Against that decision this appeal was brought, and at the conclusion of the hearing of the appeal, we allowed the appeal, set aside the judgment of the learned Chief Justice and made an order in terms of the declaration asked for in the originating summons.

Two questions arose in the appeal: the first was purely one of construction of s. 86(1) of the Act, and the second was whether the Council ought to have referred the appellant's letter to the Inquiry Committee. Section 86(1) of the Act provides as follows:

86. (1) Any application by any person that an advocate and solicitor be dealt with under this Part and any complaint of the conduct of an advocate and solicitor in his professional capacity shall in the first place be made to the Society and the Council shall refer the application or complaint to the Inquiry Committee.

Mr. Wee on behalf of the appellant submitted that s. 86(1) upon its true construction has two limbs: the first limb is an application by any person that an advocate and solicitor be dealt with under Part VII of the Act, and the second limb is a complaint of the conduct of an advocate and solicitor in his professional capacity. In other words, the conjunction "and" which joins these two limbs is to be read disjunctively as "or". Mr. Wee further submitted that the Council on receipt of the appellant's letter was obliged under s. 86(1) to refer it to the Inquiry Committee, because the subsection says that the Council "shall refer the application or complaint to the Inquiry Committee". It is not the concern, nor is it within the power, of the Council to decide whether a *prima facie* case touching on the conduct of Mr. Cashin in his professional capacity has been disclosed. Mr. Chelva Rajah on behalf of the respondent conceded that s. 86(1) has two limbs, but contended that the Council is entitled to consider, as it did whether a *prima facie* case has been disclosed before it refers the application or complaint to the Inquiry Committee.

We agree with the view that s. 86(1) has two limbs, namely: (i) an application that an advocate and solicitor be dealt with under Part VII of the Act and (ii) a complaint of the conduct of an advocate and solicitor in his professional capacity. Subsequent provisions of the Act, such as ss. 86(3), 86(4), 87(1)(c), 87(2), 87(5)(a)(i), 88(2), 96(1), 96(2) and 97(1) support such a construction: in all these provisions the expression, "application or complaint", has consistently appeared. For an application to come within the first limb it must be one in respect of a matter falling within one of the paras. (a) to (k) of s. 84(2), in respect of which an advocate and solicitor can be dealt with under Part VII of the Act; and a complaint to fall within the second limb must be one touching upon the conduct of an advocate and solicitor in his professional capacity. The two limbs, however, are not mutually exclusive; they overlap each other. An application for an advocate and solicitor to be dealt with under Part VII of the Act may involve:

(a) a complaint of the conduct of an advocate an solicitor in his professional capacity, or

(b) a complaint of the conduct of an advocate and solicitor other than in his professional capacity.

Conversely, a complaint touching on the conduct of an advocate and solicitor in his professional capacity may fall within or without one of the paragraphs of s. 84(2) of the Act. As an illustration, a case of professional misconduct which does not fit into any of those paragraphs is *Hilborne v. Law Society of Singapore* [1978] 1 MLJ 229.

Where a person makes an application or a complaint which falls within the meaning of s. 86(1) of the Act, it is mandatory on the part of the Council to refer it to the Inquiry Committee. On the other hand, where an application or a complaint does not fall within that subsection, the Council, has no such obligation and, indeed, will be obliged to reject it. From this, it follows that the Council must on receipt of an application or a complaint consider whether it comes within s. 86(1). However, the Council should not consider further whether the application or complaint discloses a *prima facie* case against the advocate and solicitor concerned.

We now turn to the matters alleged in the appellant's letter. Mr. Wee argued that this letter was not a complaint but an application. Such an argument is one on semantics and has no merit. At any rate it is contrary to what the appellant said in paras. 3 of his letter: he said that there were "certain facts relating to" the three cheques which constituted his "complaint" against Mr. Cashin. It is not clear whether the appellant intended his letter to be an application for Mr. Cashin to be dealt with under Part VII of the Act or a complaint of Mr. Cashin's conduct in his professional capacity. It seems to us that he intended it to be both. Be that as it may, his letter contained two principal allegations against Mr. Cashin: that he made untrue statements in his affidavits and that he credited to the clients' account of his firm, Murphy & Dunbar, money which belonged to him personally in contravention of the provisions of Rule 6 of the Solicitors' Accounts Rules 1967. The first allegation does not touch upon Mr. Cashin's conduct in his professional capacity. However, if an advocate knowingly deposes to an untrue statement in an affidavit; such conduct may well fall within paras. (h) of s. 84(2) of the Act. The second allegation, namely, a breach of Rule 6 of the Solicitors' Accounts Rules 1967 does pertain to Mr. Cashin's conduct in his professional capacity and is also a matter falling within paras. (j) of s. 84(2). Having regard to these allegations the Council should have referred the appellant's letter to the Inquiry Committee, and we so held.

Also found at [1986] 1 CLJ 626